

April 12, 2012



VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel Eric Moren
Operator
Jack's Foreign Auto Wrecking
1019 E Anaheim St.
Wilmington, CA 90744-3759

910 F St.
Wilmington, CA 90744

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom it May Concern:

I am writing on behalf of Communities for a Better Environment ("CBE"), in regard to violations of the Clean Water Act ("Act") and California's industrial storm water permit occurring at Jacks Foreign Auto Wrecking, 1019 E Anaheim Street in Wilmington, California ("Facility"). CBE is a non-profit public benefit corporation dedicated to achieving environmental health and justice by building grassroots power in and with communities of color and working class communities. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (recipient is hereinafter collectively referred to as "Jacks").

This letter addresses Jacks' unlawful discharge of pollutants from the Facility into waters of the United States, and the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Order").¹

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violators, the U.S. Environmental Protection Agency, and the State in which the violations occur.

¹ All references to law are references to the Order unless otherwise indicated.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. CBE's investigations have documented significant violations of storm water regulations at the Facility. Consequently, Jacks is hereby placed on formal notice by CBE that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to Sue, CBE intends to file suit in federal court against Jack's Foreign Auto Wrecking and Daniel Eric Moren under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more fully below.

I. Background.

In most of the Los Angeles harbor area, storm water flows untreated either directly, or through the storm drain system, into the San Pedro Bay and other receiving waters. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering the marine environment each year. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from area industries, pour into the San Pedro Bay and other receiving waters. These contaminated storm water discharges can be controlled, and they must be controlled in order for the marine ecosystem to have a fighting chance at regaining its health.

Discharges from auto dismantler operations such as the Facility are of significant concern because the industrial activities associated with these sites make toxic pollutants particularly accessible to storm water. In particular, activities such as stockpiling, processing and segregation of used metal parts leaves many sources of pollution open to the elements. Scrap metal from automobiles, electric motors, electric components, radiators, batteries, ferrous and non-ferrous turnings and cuttings, wire, tanks, containers, drums and miscellaneous industrial machinery existing in different stages of corrosion and decay may release, among other substances, fuel, oil, lubricants, PCBs, lead, lead acid, lead oxides, iron, aluminum, copper, zinc, cadmium, mercury, asbestos, benzene, ethylene glycol, radioactive isotopes, grease, paint, suspended solids, dust and debris, pH-affecting affecting substances and chemical residue. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to storm water and non-storm water flows. Outdoor service vehicles track dust, particulate matter, and other contaminants to areas on and off the premises. These vehicles also expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids. CBE investigators have observed and documented these conditions at the Facility. The location of violations, activities constituting violations, standards alleged to be violated, dates of the alleged violations, persons responsible for the violations, and the persons giving notice of intent to sue are described below.

II. The Location of the Alleged Violations.

The violations alleged in this notice letter have occurred and continue to occur at the Facility, which is located at 1019 E Anaheim Street in Wilmington, California. The Facility discharges its contaminated storm water and non-storm water pollutants into storm drains and into San Pedro Bay. These receiving waters are waters of the United States. The violations of

the substantive and procedural requirements of the Order and the Act have occurred and continue to occur throughout the Facility.

III. Activities at the Facility Alleged to Constitute Violations.

Jacks has not developed and implemented an adequate Storm Water Pollution Prevention Plan ("SWPPP") and an adequate Monitoring and Reporting Program to manage activities at the Facility. Operations at the Facility occur outdoors and are exposed to rainfall. These activities include, but are not limited to the following: scrap operations such as shredding, processing, and segregation of scrap metal, auto husks and ferrous and non-ferrous metals; storage of auto husks, industrial machinery and other items in preparation for processing; storage of scrap metal, and hazardous and non-hazardous waste after processing; and operation of trucks and equipment associated with stockpiling, shredding, processing, segregating, receiving and shipping materials for processing and after processing.

CBE's investigation indicates that the Facility lacks essential structural and non-structural controls and management practices to prevent rainfall, storm water, and non-storm water flows from coming into contact with sources of contaminants at the Facility. Additionally, CBE believes that insufficient measures are in place to remove pollutants prior to the discharge of storm water and non-storm water from the Facility. **As a result of the failure to implement adequate structural and non-structural management practices and controls at the Facility, Jacks discharges contaminated and unpermitted storm water and non-storm water from the Facility into waters of the United States.** Additional activities at the Facility that are alleged to constitute violations are discussed below in Section IV of this Notice of Violations and Intent to Sue.

IV. The Standards, Limitations, and Orders Alleged to Have Been Violated.

A. Discharges in Violation of the Clean Water Act.

Jacks discharges contaminants and industrial storm water and non-storm water, which Congress has identified as pollutants, from the Facility into waters of the United States in violation of the terms of the Order. The Order is an NPDES permit. The Clean Water Act provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of an NPDES permit (33 U.S.C. §1311(a)).

As described above, Jacks has discharged and continues to discharge contaminated storm water and non-storm water from the Facility to waters of the United States. Although Jacks has obtained coverage under the Order by filing a Notice of Intent to Comply with the Order ("NOI"), Jacks has not complied with the Order. Information available to CBE, which includes Jacks' admissions in annual reports submitted to the Board, indicates that Jacks has not fully complied with the Order since it became applicable in 1997.

Contaminated storm water discharges from the Facility during every significant rain event, defined by the U.S. Environmental Protection Agency as greater than or equal to 0.1

inches of precipitation in a 24-hour period. Attachment A provides a table of rain data reflecting information currently available to CBE indicating the dates on which significant rain events occurred from 2007 through the present. Every day that Jacks has discharged contaminated storm water and unpermitted non-storm water from the Facility is a separate and distinct violation of Section 301(a) of the Act (33 U.S.C. § 1311(a)). Jacks will continue to be in violation each day that contaminated storm water and non-storm water are discharged from the Facility in violation of the Act and the Order. CBE will include additional violations as evidence of recent discharges of polluted storm water and non-storm water becomes available. Jacks is subject to penalties for violations of the Act occurring since April 12, 2007.

B. Discharges in Violation of the Order.

Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES discharge permit (33 U.S.C. § 1342). Discharge Prohibition A(1) of the Order prohibits both the direct and indirect discharge of materials other than storm water (defined as non-storm water discharges), to waters of the United States. Discharge Prohibition A(2) of the Order prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Order prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the Order also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedence of any applicable water quality standard contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

As described above, CBE believes that Jacks has discharged contaminated storm water from the Facility during every significant rain event that resulted in a discharge from the facility, at a minimum on those dates indicated by the table in Attachment A. As described above, Jacks has also discharged contaminated non-storm water. Jacks will continue its illegal discharges until Jacks complies with the Order. CBE alleges that these discharges cause or threaten to cause pollution, contamination, and nuisance in violation of Discharge Prohibition A(2) of the Order and the discharge prohibitions set forth in the Inland Surface Waters Plan, the California Toxics Rule, and other applicable standards. CBE alleges that these discharges adversely impact human health and the environment in violation of Receiving Water Limitation C(1). CBE further alleges that these discharges also cause or contribute to exceedences of water quality standards in violation of Receiving Water Limitation C(2). These unlawful discharges from the Facility are ongoing. Each discharge from the Facility constitutes a separate violation of the Order and the Act. Jacks is subject to penalties for violations of the Order and the Act since April 12, 2007.

C. Failure to Develop or Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the Order require dischargers of storm water associated with industrial activities to develop, implement, and update an adequate SWPPP no later than October 1, 1992. Provision E(2) requires dischargers who submitted an NOI pursuant

to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Section A(2)). The SWPPP must also include BMPs that achieve Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") (Effluent Limitation B(3)). Among other elements, the SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and revised as needed. (Section A(9),(10)).

CBE's investigation of the conditions at the Facility demonstrates that Jacks operates with an inadequately developed or implemented SWPPP, in violation of the requirements set forth above. Specifically, Jacks has not implemented a SWPPP requiring BMPs that adequately minimize the exposure of storm water to pollutants associated with industrial activities, that control and minimize contaminated runoff and non-storm water discharges, or that adequately filter and remove pollutants in storm water and non-storm water prior to discharge so as to prevent or reduce pollutants, as required by Section A(8). Jacks has not developed or implemented a SWPPP that prevents discharges from violating Discharge Prohibition A, Effluent Limitation B, and Receiving Water Limitation C. Jacks has not adequately evaluated and revised its SWPPP to address these failures as required by Sections A(7) and (8). Jacks has not developed or implemented a SWPPP requiring BMPs that achieve BAT/BCT, in violation of Effluent Limitation B(3) (See also section IV.C.1).

Therefore, Jacks has been in continuous violation of the requirement to develop and implement an adequate SWPPP for the Facility every day since April 12, 2007. Jacks will continue to violate every day that Jacks fails to develop and implement an adequate SWPPP. Jacks is subject to penalties for violations of the Order and the Act since April 12, 2007.

1. Failure to Implement BAT/BCT.

CBE's investigation indicates that Jacks has not implemented BAT and BCT at the Facility, in violation of Effluent Limitation B(3). Effluent Limitation B(3) of the Order requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT/BCT. Jacks has failed to develop a SWPPP that includes BMPs that would meet BAT/BCT standards when implemented, and has in fact failed to implement BAT/BCT. Jacks was required to have implemented BAT/BCT by no later than August 1, 1997. Therefore, Jacks has been in continuous violation of the BAT/BCT requirements every day since August 1, 1997 and will continue to be in violation every day that Jacks fails to implement BAT/BCT. Jacks is subject to penalties for violations of the Order and the Act occurring since April 12, 2007.

2. *Failure to Develop, Implement, and Report Best Management Practices.*

Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedence of water quality standards. CBE's investigation indicates that Jacks has not developed or implemented BMPs that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges to levels that will prevent discharges from causing or contributing to exceedences of water quality standards. As described in Section IV.C.1 of this letter Jacks has failed to develop a SWPPP that includes BMPs that would achieve BAT and BCT when implemented. Further, Jacks has failed to report to the Board on any such adequate BMPs. Finally, Jacks was required to develop and implement appropriate BMPs by no later than August 1, 1997. Therefore, Jacks has been in continuous violation of the BMP requirements of the Order every day since August 1, 1997, and will continue to be in violation every day that Harbor fails to develop, implement, and report on appropriate BMPs. Jacks is subject to penalties for these violations of the Order and the Act occurring since April 12, 2007.

D. *Failure to Develop and Implement an Adequate Monitoring and Reporting Program.*

Section B(1) and Provision E(3) of the Order require facility operators to develop and implement an adequate monitoring program to satisfy several objectives. The monitoring program must ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Order (Section B(2)). The monitoring program must also ensure that pollution prevention practices and the SWPPP are evaluated and revised to meet changing conditions at the facility, as required by Section A of the Order (Section B(2)). Finally, the monitoring program must measure the effectiveness of the BMPs in preventing or reducing pollutants in storm water and authorized non-storm water discharges, and must be revised whenever appropriate (Section B(2)). Facility operators must explain how the monitoring program will satisfy these objectives (Section B(10)). The monitoring program was required to be in place by no later than October 1, 1992. (Section B(1)).

An adequate monitoring program requires facility operators to visually observe all drainage locations at the facility for storm water discharges, authorized non-storm water, and unauthorized non-storm water (Section B(3), (4)). Specifically, Section B(3) of the Order requires facility operators to conduct quarterly visual observations of all drainage areas within their facilities for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires facility operators to visually observe storm water discharges from one storm event per month during the wet season (October 1-May 30). These observations must document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and source of any pollutants (Section B(3), (4)). Facility operators must maintain records of observation dates, locations observed, observations, and responses taken to eliminate unauthorized non-storm water discharges and reduce or prevent pollutants from contacting non-storm water and storm water discharges (Section B(3), (4)).

Facility operators must also observe and collect samples of storm water discharges from all locations where storm water is discharged (Section B(5), (7)). Sample collection from all discharge points must occur during the first storm event of the wet season and at least one other storm event of the wet season (sampling of stored or contained storm water must occur any time the stored or contained storm water is released) (Section B(5)). Storm water samples must be analyzed for total suspended solids ("TSS"), pH, specific conductance, and total organic carbon ("TOC") or oil and grease, toxic chemicals and other pollutants that are likely to be present in the storm water discharges, and any other analytical parameters listed in the Order under Table D or required by the Regional Water Board (Section B(5)(c)).

Facility operators must comply with certain procedural requirements to achieve the objectives of the monitoring program. Among these requirements, operators must explain monitoring methods and describe the location, frequency, and detection limits used in the monitoring program (Section B(10)). Facility operators also must retain records of all storm water monitoring information and copies of all reports for at least five years (Section B(13)). By July 1 of each year, facility operators must also submit an Annual Report to the Regional Water Board. The Annual Report must include a summary and evaluation of all monitoring results, all records of the monitoring program, any applicable analysis and laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report, and an explanation of any failure to implement an activity required by the Order (Section B(13), (14)).

Information available to CBE indicates that Jacks has been operating with an inadequately developed and implemented monitoring program in violation of the substantive and procedural monitoring requirements set forth above. Specifically, Jacks has failed to meet the objectives of the monitoring program by discharging materials other than storm water directly into waters of the United States, in violation of Discharge Prohibition A(1). Substantively, Jacks has failed to observe or record visual observations of non-storm water and storm water discharges as required by Sections B(3) and (4) of the Order. Jacks has also failed to collect storm water samples in all discharge points, in direct violation of Sections B(5) and B(7) of the Order. Jacks has failed to comply with the procedural requirements of the monitoring program by failing to explain the monitoring methods, including the rationale and description of the

location, frequency and detection limits, in violation of Section B(10) of the Order. Jacks' Annual Reports are incomplete and lacked the necessary descriptions and evaluations of visual observations, sampling and analysis results, laboratory reports, and explanations of all failures to implement required activities.

As a result of Jacks' failure to adequately develop and implement a monitoring program, Jacks has been in continuous violation of the Order and the Act every day since August 1, 1997. Jacks will continue to be in violation of the monitoring and reporting requirements every day it fails to develop and implement an adequate and effective monitoring and reporting program at the Facility. Jacks is subject to penalties for all violations of the Order and the Act occurring since April 12, 2007.

E. Failure to File True and Correct Reports.

Provision E(6) and Sections A(9), C(9), (10) and (11) of the Order require dischargers to submit an Annual Report by July 1 of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. Furthermore, Sections C(9) and (10) of the Order require dischargers to certify, under penalty of law, that the permitted Facility is in compliance with the Order and to report any noncompliance with the Order's terms. CBE's investigation indicates that Jacks has signed incomplete annual reports and purported to comply with the Order despite significant noncompliance at the Facility. Consequently, Jacks has violated Section (C) of the Order and Section 309(c)(4) of the Clean Water Act² every time Jacks signed an incomplete or incorrect annual report that falsely certified compliance with the Act. Aside from potential criminal charges, Jacks is subject to penalties for civil violations of the Order and the Act occurring since April 12, 2007.

V. Dates of Violation.

The dates of violation are set forth in Section IV above, following each individual allegation of violation.

VI. Persons Responsible for the Violations.

CBE puts Jack's Foreign Auto Wrecking and Daniel Eric Moren on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBE puts Jacks on notice that CBE intends to include those persons in this action.

VII. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

² "Section 309(c)(4) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in any . . . document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or both." Section C(19).

Milton Hernandez
Wilmington Community Organizer
Communities for a Better Environment
6325 Pacific Blvd., Suite 300
Huntington Park, CA 90255
(323) 826-9771 ext. 106

VIII. Counsel.

CBE is represented by counsel in this matter. Please direct all communications to the following attorneys:

Jennifer Ganata
Legal Fellow
Communities for a Better Environment
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Huntington Park, CA 90255
(323) 826-9771 ext. 122

Maya Golden-Krasner
Staff Attorney
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IX. Penalties.

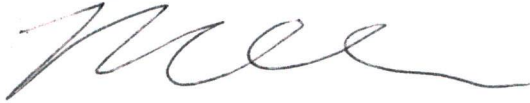
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Jacks to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to Sue. In addition to civil penalties, CBE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBE believes this Notice of Violations and Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period or thereafter, to file a citizen suit under Section 505(a) of the Act against Jacks for the above-referenced violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. However, if you wish to pursue such discussions in the

absence of litigation, we suggest that you initiate discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Maya Golden-Krasner
Communities for a Better Environment

cc via certified mail, return receipt requested

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
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1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Sam Unger, Executive Officer
Regional Water Quality Control Board
Los Angeles Region
320 W. Fourth Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT A
TABLE OF SIGNIFICANT RAIN EVENTS¹

4/20/2007	1/13/2010	1/30/2011
9/21/2007	1/14/2010	2/16/2011
9/22/2007	1/17/2010	2/18/2011
10/13/2007	1/18/2010	2/19/2011
11/30/2007	1/19/2010	2/25/2011
12/7/2007	1/20/2010	2/26/2011
12/18/2007	1/21/2010	3/20/2011
12/19/2007	1/22/2010	3/21/2011
1/23/2008	2/5/2010	3/23/2011
1/24/2008	2/6/2010	3/25/2011
1/25/2008	2/15/2010	3/27/2011
1/26/2008	2/19/2010	5/17/2011
1/27/2008	2/23/2010	10/4/2011
1/28/2008	2/27/2010	10/5/2011
2/24/2008	3/6/2010	11/4/2011
5/23/2008	4/5/2010	11/6/2011
11/4/2008	4/12/2010	11/12/2011
11/25/2008	10/6/2010	11/20/2011
11/26/2008	11/20/2010	12/12/2011
12/15/2008	12/10/2010	1/21/2012
12/17/2008	12/17/2010	1/23/2012
12/22/2008	12/18/2010	2/15/2012
12/25/2008	12/19/2010	2/27/2012
1/23/2009	12/20/2010	3/17/2012
2/5/2009	12/21/2010	3/18/2012
2/6/2009	12/22/2010	3/25/2012
2/7/2009	12/23/2010	4/10/2012
2/8/2009	12/24/2010	4/11/2012
2/9/2009	12/26/2010	
2/13/2009	12/27/2010	
2/16/2009		
2/17/2009		
3/4/2009		
10/13/2009		
10/14/2009		
12/7/2009		
12/11/2009		
12/12/2009		
12/13/2009		

¹ Data available to date, recorded at CIMIS weather station #174, Long Beach.A, available at:
http://www.ipm.ucdavis.edu/calludt.cgi/WXSTATIONDATA?MAP=&STN=LONG_BEACH.A